

Internal Revenue Service
memorandum

CC:TL-N-1238-91

Br4:KAAqui

date: JAN 03 1991

to: District Counsel, San Francisco CC:SF
Attn: International Special Trial Attorney

from: Assistant Chief Counsel, (Tax Litigation) CC:TL

subject: [REDACTED]

By memorandum dated November 13, 1990, you requested tax litigation advice concerning refunds originating from issues settled in the above referenced case. After coordinating with the Assistant Chief Counsel (International), we hereby transmit our response.

ISSUE

Whether partial settlement stipulations filed with the Tax Court should contain language providing for Joint Committee review where settlement of all issues could result in a net refund in excess of \$[REDACTED].¹

CONCLUSION

We agree that whenever a net refund in excess of the statutory amount could potentially result from the settlement of any issues in a petitioned case, partial settlement stipulations should reserve the right to respondent to submit the case to the Joint Committee prior to entry of decision.

FACTS

Briefly, in its petition filed with the Tax Court, petitioner seeks a redetermination of \$[REDACTED] in deficiencies for taxable years [REDACTED], [REDACTED] and [REDACTED]. Pursuant to established procedures, the case was sent to Appeals, San Francisco, for settlement purposes. It has been determined

¹ Section 11834 of the Revenue Reconciliation Act of 1990 increased the Joint Committee review threshold to \$1,000,000. Nevertheless, you have advised that the settlement may produce refunds in excess of the new threshold.

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that settlement of adjustments made under I.R.C. § 482 may generate refunds in excess of the amount provided in section 6405 and it is proposed that partial settlement stipulations filed with the Tax Court contain language that such settlement will be subject to review by the Joint Committee on Taxation (Joint Committee). Petitioner contends otherwise.

In a submission dated [REDACTED], petitioner interprets respondent's own guidelines concerning premature referrals to the Joint Committee and asserts that under respondent's interpretation, such review could be delayed for five or ten years. Petitioner's arguments were supplemented by a letter dated [REDACTED], wherein it is urged that respondent's position will impede the settlement of docketed cases and will create new administrative problems for the Service.

DISCUSSION

Section 6405(a) of the Code provides that no refund or credit of a tax liability in excess of \$1,000,000 shall be made after the expiration of 30 days from the date upon which a report on the refund or credit is submitted to the Joint Committee on Taxation.

Section 6405(b) provides that any credit or refund allowed or made under section 6411 shall be made without regard to the provisions of subsection (a). However, after the Commissioner determines the correct amount of the tax for the carryback year, if the credit or refund is still in excess of the statutory amount, a report shall be submitted to the Joint Committee pursuant to section 6405(a).

Chief Counsel Directives Manual (CCDM) provides at (35)8(11)1 that:

(4) With respect to a case in . . . the Tax Court, . . . a report must be made to the Joint Committee of any full or partial settlement or concession of issues before the court, by stipulation or otherwise, which would result in refunds or credits in excess of [the statutory amount], after reduction by the amount of offsets which might result should a determination of any remaining issues before the court be in favor of the Government.

The CCDM also provides at (35)8(11)2 that:

(1) Before proposing any settlement or concession, in whatever form, in any of such cases, the attorney to whom a case is assigned, whether in the field or the National Office, has the responsibility of ascertaining whether

such settlement or concession would result in the case having to be first reported to the Joint Committee. Any partial settlement which could potentially result in a refund in excess of [the statutory amount] should only be negotiated with the express understanding that it is subject to Joint Committee review if the disposition of the remaining issues results in a net refund in excess of [the statutory amount].

It is the view of this Division that whenever the settlement of any issue or issues in a case could potentially result in a refund in excess of the statutory amount, the taxpayer should be advised of the likelihood of the necessity for Joint Committee review. Furthermore, caution and prudence require that any stipulation of partial settlement contain language reserving the right of respondent to submit any such case to the Joint Committee prior to entry of decision in the Tax Court.

The predecessor of section 6405 was first enacted in response to complaints that favoritism in the treatment of taxpayers was shown by the Treasury Department. See Hearings before the House Ways and Means Committee on H.R. 16462, 69th Cong., 2 (January 28, 1927). As enacted this section required that a report be given to the Joint Committee and that payment be delayed until after sixty days from the date of giving such report in refund claim cases involving amounts in excess of \$75,000. See § 710, Revenue Act of 1928, 45 Stat. 882.

Subsequently, Congress saw it fit to increase (and decrease) the statutory threshold in an attempt to avoid unnecessary delay in the closing of cases and the concomitant increase in interest payments by the Service. Thus, it appears that the objective behind section 6405 was the effectuation of a check on the exercise by the Service of its authority to make refunds in disputed cases without imposing too great a burden on the Government by way of interest charges or the time of the Joint Committee.

Respondent's assertion that review by the Joint Committee may be required in this case comports with the statutory mandate. Section 6405 and sections 8021 through 8023 prescribe a "watchdog" function to the Joint Committee. See American Enka Corporation v. Commissioner, 30 T.C. 684, 694 (1958). We do not believe that exercise of this function should be averted or hampered by a strained interpretation of the guidelines established by the Service to assist its employees in determining whether such review may be warranted or is required. Section 6405 requires Joint Committee review whenever a refund attributable to a settlement exceeds the statutory amount. Whether the refund results from the settlement of one or more issues is not controlling -- any case

in which settled issues could produce a refund in excess of the statutory amount is potentially a Joint Committee case and the petitioner/taxpayer should be so advised.

We also conclude that the provisions of Rev. Proc. 90-2, 1990-1 C.B. 386 granting a conference to a taxpayer are clearly inapplicable in this case. Rev. Proc. 90-2 provides procedures for furnishing technical advice to District Directors and Appeals Offices by the Associate Chief Counsel (Technical). Section 6.02 states that generally, a taxpayer on whose behalf a request for technical advice is made shall be entitled by right to one conference in the National Office. Tax litigation advices to District Counsel Offices from the Assistant Chief Counsel (Tax Litigation) do not fall within the purview of this revenue procedure. Furthermore, section 11.04 provides that the term "technical advice" does not apply to cases in which the issue is in a docketed case for that year or for any prior or subsequent year. Thus, we conclude that petitioner is not entitled to a conference in the National Office to discuss the adverse determination reached herein.

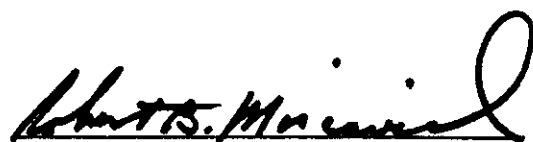
Our conclusions have been discussed with members of the Joint Committee staff and the Associate Chief Counsel (Litigation) all of whom concur.

If you have any questions or need additional assistance, please contact Keith A. Aqui at FTS 566-3308.

MARLENE GROSS

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By:



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